IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3266 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G E B POWER ENGINEERS ASSO & 1 - Petitioner(s)

Versus

GEB & 1 - Respondent(s)

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Appearance :

MR DS VASAVADA for Petitioner(s) : 1,PARTY-IN-PERSON for Petitioner(s) : 2,
RULE SERVED for Respondent(s) : 1,
MR MD PANDYA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/01/2006

ORAL JUDGMENT

1. The petitioners have filed this petition under Article 226 of the Constitution of India, praying for direction to the respondent Board to grant promotion to the petitioner No.2 from retrospective date i.e from the date from which juniors to the petitioner were promoted and praying for the direction to the respondent Board to pay the difference in salary and all other consequential benefits with interest and seniority with retrospective dates.

2. Initially Court has passed the order on 30.6.1986, wherein the Court has observed that the grievance of the petitioner No.2 was that the promotion was on the basis of seniority-cum-merit. The Court has not entertained the petition at that stage and directed the respondent to decide finally representation of the petitioner within a period of three weeks from the date of the receipt of the said order.

In case the representation was decided against the petitioner, the petitioner could revive the petition. On rejection of the representation, the petition was revived.

3. Rule was issued on 20.4.1987. Mr.D.S.Vasavada, learned advocate appearing for the petitioners has submitted that the petitioner No.2 has joined the services of the respondent Board on 28.12.1976 as Junior Engineer. The petitioner No.2 has been promoted as Deputy Engineer vide order dated 5.5.1984. As per the say of the petitioner, the petitioner should have been promoted with effect from 20.4.1983, the date on which juniors to the petitioner were promoted. Mr.Vasavda, submitted that criteria of the promotion of Junior Engineer to the Deputy Engineer was that the vacancies of Dy.Engineer could be filled in by departmental promotion on

seniority-cum-merit basis and direct recruitment as under (1) 40% by departmental promotion of Diploma holders (2) 40% by departmental promotion of Degree holders and (3) 20% by direct recruitment.

4.Mr.Vasavda has further submitted that the only reason for not granting promotion on 20.4.1983 was that there were adverse remarks against the petitioner. The petitioner has received adverse remarks in the year 1977-78 dated 16.12.1978. An appeal preferred against the said remarks on 9.1.1979 was rejected. Appeal preferred on 5.8.1980 against the adverse remarks of 12.6.1980 was also rejected and appeal preferred on 25.5.1981 against the adverse remarks of 26.3.1981 was allowed and adverse remarks were expunged. It is further submitted that charge-sheet was issued on 10.3.1980 and as a result of the charge-sheet,

on 11.2.1981 warning was given. Mr.Vasavda has further submitted that except these three adverse remarks there is no positive demerit and performance of the petitioner was found to be satisfactory and hence the petitioner was promoted in the year 1984.

5. In support of his submission he relied on the decision of this Court **in the case of Special Civil Application No.6058 of 1986 decided on 26.7.2004**, wherein in similar circumstances this Court has directed the respondent No.1 to consider the case of the petitioner for promotion of Deputy Engineer as on 12.9.1986 on the basis of the criteria laid down by the respondent. The said exercise was directed to be completed within a period of three months from the receipt of the said order.

6. Mr.Vasavda has further submitted that mere

adverse remark is not enough for withholding promotion. There must be some positive demerits. He relied on the decision of this Court **in the case of Special Civil Application No.368 of 1991 decided on 15.2.2001**, wherein this Court has directed the respondent Board to reconsider the petitioner No.1's case for promotion to the post of Deputy Engineer in the year 1983 or any other year earlier than 1988 in accordance with law. The Court has made it very clear that if the petitioner No.1's representation against the adverse remarks for the years 1980, 1981 and 1983 was still pending and in case appeal preferred on 3.5.1988 against the order of strict warning was also pending, the same were to be decided before the re-consideration of his candidature for promotion from 20.4.1983 as claimed by the petitioner. In that case, thereafter, on the basis of reconsideration appropriate order in

accordance with law, was directed to be passed. The Court further observed that in case, as a result of the reconsideration, the petitioner No.1 was found to be entitled to be promoted from 20.4.1983 or any date earlier than 3.12.1988 and he was so promoted, he would also be entitled to all consequential benefits.

7. On the basis of the aforesaid two judgments Mr.Vasavda has submitted that the petitioner was due for promotion for Deputy Engineer since 1983. He should also be entitled to all consequential benefits.

8. An affidavit is filed on behalf of respondent Board on 7.12.2004, wherein it is stated that promotion from the post of Junior Engineer to that of Deputy Engineer is considered on the principles of seniority-cum-merit. While considering a Junior Engineer for promotion the

competent selection committee takes into consideration the following aspects;

(a) Whether the last 3 Annual Confidential Reports are clear and does not contain any adverse reports ?

(b) Whether there is any disciplinary action pending or contemplated ?

(c) Whether there is any punishment in force due to disciplinary actions ?

(d) Whether the concerned employee is eligible for promotion as per the quota decided for this purpose i.e. 40% Degree holders, 40% Diploma Holders and 20% open selection ?

9.It is further stated that the petitioner was a Degree Holder in Electrical Engineering and had joined respondent Board as Junior Engineer on 28.12.1976. After having promoted him to the post of Deputy Engineer on 18.5.1984, present

petition was filed and claimed deemed date of promotion with effect from 20.4.1983. It is further stated that the Confidential Report of the petitioners revealed that in the year 1976-77, 1977-78, 1978, 1979 and 1980, the performance was not found to be satisfactory. It is observed in the said confidential report that the petitioner could not work independently in the office and he could not take work from his subordinate. He was supposed to be very quick and he was advised to show improvement in his work. For the year 1979 he did not take initiative but was required specific instructions. He has very limited acceptance and receptivity to new ideas and limited interest and capability for training and development of others. Sometime he tried to evade responsibility and he has also limited creative thinking. His adverse remarks were not expunged even in appeal.

During the year 1980, it was pointed out that he was disobedient of any order of the superior officer or a senior officer. He was habitual negligent or was neglecting the work and thereby committing breach of regulation or instructions. After appropriate inquiry for this charge-sheet, he was strictly warned vide order dated 11.2.1981.

10. On the basis of the aforesaid reports the competent selection committee had considered his case for promotion in the year 1983 and had come to the conclusion that though the performance of the petitioner in the last three years i.e. 1980, 1981 and 1982 was satisfactory and though the adverse remarks for the year 1980 have been expunged, pursuant to charge-sheet issued on him on 10.8.1980 he was strictly warned and he was advised to show improvement and sincerity in his work. He was

not considered for promotion in the year 1983. Subsequently the Selection Committee found that he has shown improvement in his work and that his last three confidential reports for the year 1981, 1982 and 1983 were found to be clear and he was considered for promotion to the post of Deputy Engineer and accordingly the promotion to the post of Deputy Engineer was granted on 12.5.1984. He has, therefore, submitted that the petitioner's overall performance was not satisfactory and he was even strictly warned pursuant to charge-sheet. The case of the petitioner was considered alongwith others and the Selection Committee came to the conclusion that the petitioner did not deserve to be promoted alongwith others who had positive merits. The case of petitioner was again considered in the year 1984 and, thereafter, on fulfilling the requisite criteria he was promoted as Deputy Engineer.

It is, therefore, submitted that the relief as prayed for in the petition cannot be granted. Copy of the affidavit in reply which is filed by the respondent though is not on record, the xerox copy from the petitioner is taken on record.

11. After having heard learned advocate Mr.D.S.Vasavada for the petitioners and after having gone through the facts stated and averments made in the petition as well as the documents attached alongwith the petition and the two decisions of this Court relied on by the petitioners and thereafter having considered the affidavit in reply filed on behalf of the respondent Board, the Court is of the view that the petitioner's case was in fact considered for the promotion in the year 1983 and adverse remarks were weighed with the Selection Committee charge-sheet was filed and

punishment inflicted as a result of the charge-sheet filed against him and strict warning was given. The respondent Board – Selection Committee has considered that the overall performance of the petitioner was not satisfactory and no positive merits were pointed out. The petitioner cannot, therefore, derive any affidavit out of those two decisions which have been relied on. Even in the case of the petitioner in Special Civil Application No.No.368 of 1991, the Court has considered that at the time when the said matter was decided the appeal against the said adverse remarks was pending and was not decided. The Court has further directed that if as a result of decision of the said appeal and on reconsideration of the petitioner's case if the petitioner was found to be eligible for the promotion, the same shall be granted either from 20.4.1983 or any date earlier than

3.12.1988. Here in the present case the Selection Committee has considered the petitioner's case immediately and also expressed opinion that the petitioner was not meritorious as compared to other persons. He has not been given promotion in the year 1983, but in the year 1984 promotion was given to the petitioner. Since the respondent Board has acted in accordance with law, and looking to the law laid down by this Court in various decisions, the Court does not see any justification. The petition is accordingly dismissed. Rule is discharged.

(K. A. PUJ, J.)

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